

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.10633 of 2015 (O & M)

Date of Decision: *October 05, 2018*

Kulwinder Kaur

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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PRESENT: - Mr. Padamkant Dwivedi, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab, for respondent Nos.1, 2 and 5.

Ms. Alka Chatrath, Advocate, for respondent No.6.

Mr. A.S. Sandhu, Advocate, for respondent Nos.3 and 4.

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Jaspal Singh, J

By virtue of instant petition, petitioner seeks issuance of a writ in the nature of certiorari, quashing order dated January 30, 2014 (Annexure P-13) passed by respondent No.2 – District Education Officer (Schools), Ferozepur, thereby ordering that case of petitioner be treated as having her adopted CPF Scheme as well as a writ in the nature of mandamus, directing the respondents to consider and decide

the case of petitioner for grant of pensionary benefits treating her option for 'Retirement benefits admissible in the Punjab Privately Managed Recognized Aided School Retirement Benefits Scheme, 1992' and release consequential dues alongwith interest @ 18% per annum.

Facts of the case giving rise to instant lis are that petitioner was appointed as S.S. Mistress in respondent No.3 – Malwa Khalsa Senior Secondary School, Ferozepur on May 08, 1978. State of Punjab notified Pension Scheme for the Punjab Privately Managed Recognized Aided Schools in the year 1992 and options were invited from employees of the schools. Petitioner filled the prescribed proforma on May 18, 1992 (Annexure P-1) but by mistake, she ticked the option of Contributory Provident Fund (CPF) but within three days i.e. on May 21, 1992 (Annexure P-2), she submitted revised proforma thereby opting for Pension Scheme.

Petitioner was suspended on September 19, 1992 and terminated from service. The order of termination was set aside by the Competent Authority with continuity of service and back wages, and joined as such on March 07, 2007. The pay and allowances for the period she remained out of service were paid to her on August 14, 2010 to the tune of ₹ 16,24,914/- by deducting a part of her salary which was deposited in CPF whereas she had opted for Pension Scheme vide revised proforma dated May 21, 1992 (Annexure P-2). Lateron, she came to know that her revised proforma, Annexure P-2 was never forwarded to the competent authority as it was got misplaced by

respondent Nos.4/6. Petitioner approached respondent No.2 and submitted another proforma dated May 08, 2011 (Annexure P-3) thereby opting for retirement benefit admissible under the Pension Scheme. Petitioner retired from service on January 31, 2012 as Acting Principal of the School.

Petitioner submitted a representation dated July 24, 2012 (Annexure P-4) to respondent No.3 that her case be considered under Pension Scheme, 1992 followed by clarification dated September 12, 2012 (Annexure P-5). Respondent No.2, being competent authority, vide endorsement dated October 05, 2012 approved the case of petitioner and vide letter dated December 12, 2012 (Annexure P-16) written by respondent Nos.4/6, petitioner was asked to deposit appropriate provident fund in pension head after getting sanction from the department so that balance amount could be released to her. However, respondent Nos.4/6 did not apply for obtaining sanction to the department. Fact of the matter is that request of petitioner was overlooked. Ultimately, she was compelled to approach this Court by filing CWP No.1207 of 2014 for issuance of a writ in the nature of mandamus, directing the respondents to consider the decide her case for grant of pensionary benefits treating her option for Retirement Benefits admissible under the 1992 Scheme. In the interregnum, respondent No.2, vide impugned order dated January 30, 2014 (Annexure P-13) ordered that case of petitioner be treated as having her adopted CPF Scheme. Consequently, petitioner was allowed to withdraw aforesaid

CWP No.1207 of 2014 with a liberty to file fresh CWP to lay challenge to impugned order, vide order dated March 30, 2015 (Annexure P-14).

Heard learned counsel for the parties and perused the record.

Undisputably, petitioner served the department for more than 30 years. Though, at the first instance, she opted for Contributory Provident Fund Scheme but within three days i.e. on May 21, 1992, she revised her option thereby opting for Pension Scheme, 1992. It is the contention of petitioner that revised option dated May 21, 1992 was not forwarded to the competent authority as it was misplaced by respondent Nos.4/6. It is not the case of respondents that had the option of Pension Scheme been sent to the competent authority, same ought to have been rejected in view of earlier option of CPF. Rather, respondent No.2 vide endorsement dated October 05, 2012 approved the case of petitioner and accepted her option dated May 08, 2011 for Pension Scheme. Moreover, petitioner is ready to deposit the appropriate provident fund in the pension head.

This Court is of the considered opinion, that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. The aforesaid view has been taken from a judgment delivered by the Hon'ble Apex Court in ***Uco Bank & others vs. Sanwar Mal, 2004(2) SCT 440*** which has been followed by Division

Bench of this Court in ***Punjab National Bank & others vs. Virender Singh Siwach, 2016(3) SCT 215.***

Adverting to the facts of the case in hand, no doubt option dated May 18, 1992 (Annexure P-1) was exercised by the petitioner for availing the benefit under the CPF Scheme but after three days thereof a fresh/revised option dated May 21, 1992 (Annexure P-2) was exercised by her, meaning thereby, previous option Annexure P-2 was superseded by fresh option Annexure P-3. A perusal of Annexure P-3 transpires that it was submitted by the petitioner-Kulwinder Kaur which was duly signed by Mr. Kuldeep Singh, Principal/Headmaster, Malwa Khalsa Senior Secondary School, Ferozepur City as well as Mr. Jaswant Singh Kailvi, District Education Officer. If option Annexure P-3 has not been acted upon by the Senior Officers of the Education Department due to its misplacement or some other reasons, petitioner cannot be made to suffer. Otherwise also, as has been discussed in the foregoing paragraph, object of the Pension Scheme can only be achieved if the benefit thereof goes to the deserving persons. In the case in hand, if there is lapse or omission if any, the same is on the part of the respondents and in this regard, no fault can be attributed to the petitioner. Thus, this Court observes that option dated May 21, 1992 (Annexure P-3) is deemed to have been exercised and accordingly, petitioner is held entitled to the benefit accrued on the basis thereof.

In the light of what has been discussed above, instant petition is allowed. Impugned order dated January 30, 2014 (Annexure P-13) is set aside.

In view of the fact that petitioner stood already retired on January 31, 2012; and illegal/arbitrary decision on her second option (Annexure P-3) exercised on May 21, 1992 was taken on January 30, 2014, respondents are directed to treat her option for Pension Scheme and release all the consequential retiral benefits admissible under Punjab Privately Managed Recognized Aided School Retirement Benefits Scheme, 1992, that too, alongwith interest @ 9% per annum from the date of filing of this petition till actual payment, within a period of two months from the date of receipt of a certified copy of this judgment. In case of non-compliance, petitioner shall be at liberty to have recourse to the available remedies in accordance with law as well as to approach this Court.

No order as to costs.

October 05, 2018

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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No